

APPEAL NO. 030556  
FILED APRIL 2, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 11, 2003. The hearing officer determined that (1) the appellant/cross-respondent (claimant) sustained a compensable injury on \_\_\_\_\_; (2) the claimant had disability from March 7, 2002, through June 23, 2002; and (3) the respondent/cross-appellant (carrier) is not relieved from liability for this claim under Section 409.002 because the claimant timely reported an injury pursuant to Section 409.001. The claimant appeals the disability determination on sufficiency of the evidence grounds, asserting that disability continued through the date of the hearing. The carrier urges affirmance of the hearing officer's determination that the claimant did not have disability from June 24, 2002, through the date of the hearing. The carrier cross-appeals the hearing officer's injury determination and disability determination for the period of March 7, 2002, through June 23, 2002, on sufficiency of the evidence grounds. The claimant did not file a response. The hearing officer's notice determination was not appealed and is, therefore, final. Section 410.169.

DECISION

Affirmed.

**COMPENSABLE INJURY**

The hearing officer did not err in determining that the claimant sustained a compensable injury on \_\_\_\_\_. The carrier argues that the claimant's low back injury was preexisting. This was a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, the hearing officer could find that the claimant sustained a new compensable injury on \_\_\_\_\_. Such determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

**DISABILITY**

The hearing officer did not err in determining that the claimant had disability from March 7, 2002, through June 23, 2002. The carrier's appeal of the disability determination is premised upon the success of its argument that the claimant did not sustain a compensable injury. Given our affirmance of the injury determination, we likewise affirm the hearing officer's determination that the claimant had disability from March 7, 2002, through June 23, 2002.

As stated above, the claimant contends that disability continued through the date of the hearing in this matter. The hearing officer's determination that disability ended on June 23, 2002, is based, in part, upon his determination of the nature of the injury. The hearing officer found that the compensable injury included a "low back strain" and indicated, in his Statement of the Evidence, that the injury did not include a central disc herniation at L5-S1, as revealed in an MRI. We note that the issue of extent of injury was not before the hearing officer, and our review of the record indicates that the issue was not actually litigated. In the absence of a disputed issue regarding the extent of the claimed injury, the hearing officer's decision cannot be read to specifically limit the compensable injury to only a low back strain. See Texas Workers' Compensation Commission Appeal No. 020127, decided March 4, 2002, and cases cited therein. Because the extent of the compensable injury has not yet been determined, we read the hearing officer's disability determination as addressing the period of disability with regard only to the low back strain. In view of the evidence presented, we cannot conclude that such determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*. To be clear, our affirmance of the hearing officer's disability determination does not preclude the claimant from seeking disability for a period beyond June 23, 2002, once the extent of the compensable injury is determined.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6TH STREET  
AUSTIN, TEXAS 78701.**

---

Edward Vilano  
Appeals Judge

CONCUR:

---

Chris Cowan  
Appeals Judge

---

Roy L. Warren  
Appeals Judge